

**MINUTES  
FOR THE REGULAR MEETING  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
Docket No. 5464**

**1. Opening of Meeting:**

The Appeals Board convened at 10:30, December 15, 2005 in Sacramento, with Chair Joan M. Borucki presiding.

<b>2. Roll Call: <u>Members</u></b>	<b><u>Present</u></b>	<b><u>Absent</u></b>
Joan M. Borucki, Chair	X	
Ann Richardson, Vice Chair	X	
Virginia Strom-Martin	X	
Jack Cox	X	

**3. Approval of the Minutes:**

The November 17, 2005 minutes were approved by all Members.

**4. Chair's Report:**

Chair Borucki reported that she attended the Labor Agency Secretary's meeting for the first time and was very pleased. The Secretary reported the Governors budget has been completed but there is a structural deficit to the tune of \$6-\$8 billion dollars. The Employment Development Department has taken a cut in its federal funds, and staffing will be correspondingly affected. EDD also anticipates 60% of its middle management to retire within the next few years. The Secretary plans to convene a group to work on succession planning, and Chair Borucki offered her services as she has extensive experience in this area.

**5. Board Member Reports:**

No reports were given by the Board Members.

**6. Chief Administrative Law Judge/Executive Director's Report:**

Executive Director/Chief Administrative Law Judge Jay Arcellana announced that the State of Mississippi has asked for our support in liquidating their workload. They currently have a 40,000 case back log because of the hurricane. PALJ Tim McArdle will be going to Mississippi in January to work on some training concepts with their judges. In addition, two of our judges will hear cases for Mississippi. This may be problematical in that EDD has been helping to register initial claims for the state of Mississippi, but keeping track of the claimants is proving to be very difficult. Many of them are moving around and have little or no access to telephones, so it will be a challenge for us.

Secondly, Executive Director/Chief Administrative Law Judge Jay Arcellana reported that as result of the discussion that took place at the November Board Meeting, a work group has been assembled to rewrite the hearing information pamphlet. The customer survey indicated that improvement could be made to the pamphlet. The plan is to have individuals who are not attorneys prepare a first draft, and then have our legal staff look at it to make certain that everything is correct from a legal perspective.

Executive Director/Chief Administrative Law Judge Jay Arcellana went on to report that the CUIC (California Unemployment Insurance Council) had their Southern California luncheon yesterday. Executive Director/Chief Administrative Law Judge Arcellana was the featured speaker and the council gave him kudos on the customer survey.

Other items of note: a very successful Legal Support Supervisor II meeting was conducted earlier this week, and the State Personnel Board has asked Randy Petersen to assist in training their Judges.

Executive Director/Chief Administrative Law Judge Arcellana reported that he had spoken with Margaret Ellison, and she expressed a big thank you for throwing her such a wonderful retirement party.

Vice Chair Richardson inquired if the new hearing information pamphlet would be sent to an outside consultant for a readability analysis. Executive Director/Chief Administrative Law Judge Arcellana responded that to date the CUIAB had not used outside entities, but rather an automated computer program that analyzes documents on the basis of their grade reading level, with a 7<sup>th</sup> grade reading level being the target.

Chair Borucki commented that the kind of consultants Vice Chair Richardson referred to are useful because they give feedback on the placement of information and formatting of the information in addition to the reading level.

Vice Chair Richardson also inquired what type of training Randy Petersen would be providing to the state personnel board. Executive Director/Chief Administrative Law Judge Jay Arcellana responded that Randy would be providing training in procedural aspects of hearings rather than substantive law.

## **7. Branch Reports:**

- a. Executive Director/Chief Administrative Law Judge Jay Arcellana announced that a new judge has been hired in Inland, sorely needed because of their high workload. The individual currently resides in Sacramento, but is looking to relocate to Inland.

Executive Director/Chief Administrative Law Judge Arcellana reported that the CUIAB has begun strategy and planning meetings for issues anticipated in the

upcoming year; one example: more efficient ways to accomplish decision typing and verifications.

Following up on one of the Chair's comments regarding middle management at EDD, Executive Director/Chief Administrative Law Judge Jay Arcellana stated that one of the goals for our agency last year was to deal with that precise issue, knowing that a lot of our presiding judges would be retiring. During the last year we have been able to rename or replace seven out of our thirteen presiding judges.

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the CUIAB appears to be deficient in defensive driver training. Inasmuch as this is a legal requirement, training will be emphasized in the next year.

Concerning workload, Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the field verified 18,297 cases for all programs in November. That is a 2% decrease from October. The field disposed of 20,959 cases, a 7% increase over October. Executive Director/Chief Administrative Law Judge Jay Arcellana gave a tribute to all of the field offices because they conducted in house mass calendars to achieve this. In terms of the unemployment insurance program alone, the field verified 16,393 cases, a decrease of 1% from October. The field disposed of 17,843 cases, a four percent increase over October. In disability insurance, 1,598 cases were verified, a seven percent decrease, and shows that the DI case load is dropping a bit. DI dispositions were 2,017 cases, a 20% increase over the prior month. As to rulings, the field verified 306 in November, an 18% increase over October, and disposed of 1,099, a 7% increase. The numbers in dispositions reflect our effort to make certain that when employees take time off in December and January, we don't fall behind in the workload, so we put a real push on in October and November.

- b. Deputy Chief ALJ, Appellate Operations Steve Angelides reported that in November Appellate Operations registered 1,101 new cases, exactly the same number as in October, which was the lowest in almost four years. Meanwhile, dispositions in November continued falling, to 1,022, which is also the lowest in four years. As a result, the balance of open cases increased to 2,745, the highest since December of 2004. So while our input continues to be low, our output continues to be lower, and consequently the case inventory is increasing. The higher inventory is also reflected in the average case age, which rose to 52 days, the highest since February 2005, and the median case age, which rose to 48 days, the highest since we started tracking it in May, 2005.

Deputy Chief ALJ, Appellate Operations Steve Angelides stated that the basic reason for this is simple—there are fewer ALJ's working in AO. Three ALJ's are retiring by the end of this year, Tamara Pierson, Mike Canar and Ernie Schulzke. Two of them have essentially already stopped working as they use their accrued vacation before retiring. And the third will stop working on

December 29<sup>th</sup>. So even though our input continues to be low, we still need more help in AO. In December, we are putting two retired annuitants to work, Bill Brown and Linda Shepard. In January, some of the newly retired ALJ's will also be available to help. But this is not going to be enough, so the Sacramento Office Appeals has agreed to a long-term loan of ALJ Bill Purcell. He will begin working at AO on January 10<sup>th</sup>. Bill spent several years at AO before transferring to the Sacramento Office 8 years ago, and we are delighted to have him back.

Deputy Chief ALJ, Appellate Operations Steve Angelides also reported that there are several special assignments pending in AO. We have a committee considering the possibility of bringing back some form of limited review for the more routine cases. We are also circulating proposed guidelines to be followed in AO for drafting proposed precedent decisions. Probably the most significant change being suggested is that in addition to the author, a reviewer will also be assigned for every proposed precedent. There are two potential precedent decisions pending in AO currently. One is on jurisdiction and notice in 1253 (c) cases. A draft of that decision has been prepared and it is now being reviewed. It will then be circulated for comments in AO. The other relates to notice of status of wage hearings. That case has been scheduled for oral argument in February 14<sup>th</sup> at 1:30pm. Appellate Operations also has several tax cases in which the status of couriers as employees or independent contractors is at issue. Those cases have been assigned to a single ALJ who is now reviewing them.

Finally, Deputy Chief ALJ, Appellate Operations Steve Angelides reported on the social scene they had their Holiday luncheon on December 7<sup>th</sup> and it was a big success. On behalf of the AO ALJ's, Deputy Chief ALJ, Appellate Operations Steve Angelides, extend their holiday wishes and thanks for making the CUIAB such a wonderful agency.

Vice Chair Richardson inquired, regarding reinstitution of the review process, as to the timing of any such review. Deputy Chief ALJ, Appellate Operations Steve Angelides responded the review would take place after the board author reviews the decision but before the board members are given the proposed decision for consideration.

- c. Deputy Director, Administrative Services Branch Pam Boston reported that during the month of November, CUIAB hired three new employees, promoted three employees, and had two retirements, Dorothy Alkire of Administrative Services, and Margaret Ellison of Field Operations Headquarters.

Deputy Director, Administrative Services Branch Pam Boston reported that the Department of General Services has entered into a global contract with Verizon for cellular phone service, and all state agencies are supposed to have their service switched by December 31<sup>st</sup>. The directive was issued around the 10<sup>th</sup> of December, and so it is a pretty short turn around time that may not be met by

state agencies. The CUIAB has about 50 phones that will have to be switched.

Finally, Deputy Director, Administrative Services Branch Pam Boston reported that the question has come up as to whether or not February 13<sup>th</sup>, Lincoln's birthday, is a holiday. During the last round of bargaining, it was agreed by CASE, which represents Unit 2, that one paid holiday would be eliminated, and that holiday was Lincoln's birthday, provided that all of the state bargaining units came in with the same agreement. The Unit 2 contract has been ratified by its members, but not by the legislature. SEIU, which represents Units 1 and 4 for our purposes, is currently bargaining but it is unlikely that the contracts will come in by February 13. Accordingly, as of today, February 13 is still a holiday.

- d. Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported that several of the P&PM staff members were in Sacramento that day and present at the board meeting. They are in Sacramento because they are working on some high priority projects, including the rewrite of the hearing information pamphlet, and goal-setting for 2006. Some of P&PM staff's other responsibilities include budget, workload for UI, the tax program, staffing, trade disputes, strategic planning, customer surveys, digital recording, training for the ALJs, the language program, software training, and supervisor training.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons also reported about the digital recording pilot post evaluation. The post evaluation involves two steps. One is to have a baseline study to determine what process we are going to evaluate, an observation study of what the existing procedure ALJs follow during hearings, to include tracking the times, processes and procedures. That portion was completed and sufficient enough data was received in Pasadena, so these steps won't have to be repeated in San Francisco. But in order to do a comparative study, a post evaluation is being done in Sacramento to collect the same data for ALJ's doing taped hearings. All of that data will then be funneled back to Steve Angelides and kept for historical records.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons recognized Raylene Long and her staff, Aristed and Mirella, for developing the post evaluations. She also recognized Rosemary Pinada and Pam Barrall, who did the software training manuals, and for conducting the training with the assistance of Martha Silva. Nick Dressler and Mary Mitchell in addition to the rest of the IT staff were instrumental as well.

Next, Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported on the Department of Labor and National Appellate Boards Conference coming up in June, a major project for CUIAB as the host state this year. The Department of Labor and the National Association of Unemployment Insurance Appeals Boards go hand in hand in supporting this conference, so every three years they join in to provide the funding and speakers, and to conduct the workshops. Representatives from Rhode Island, Florida, Pennsylvania and Michigan will be involved in the workshops. We hope

to have other states such as Nevada, Oregon, Washington and Arizona involved as well. Chairs from about 75% of the states will be in attendance at the conference.

Deputy Director, Planning and Program Management Branch Mary Walton-Simons went on to report that following the branch reports, Renee Irwin, Budget Officer, will give a presentation on the budget. Michelle Robinson was going to give a presentation on FISMA but she is out sick with the flu so Deputy Director, Planning and Program Management Branch Mary Walton-Simons announced she would give the presentation for her.

Lastly, Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported that following finalization of the FISMA audit report, staff, management, and supervisors will need training as part of the corrective actions required.

Chair Borucki commented on how nice and simple it has been to use the digital recording, and that the quality was excellent.

#### **8. Chief Counsel's Report:**

Chief Counsel Ralph Hilton reported on the litigation front that the CUIAB received three new cases last month, and no cases were closed. (Attachment A) The First Aid Services case has been certified for publication. As discussed before, this case recognized that any action which relates to a tax liability, including benefit status cases, must follow a very specific and statutorily specified process, which includes payment of the tax due before the court action can proceed. Immediately after the case was certified for publication, the law firm Littler Mendelson of San Francisco filed a request for de-publication. We do not believe they have met the requirements for de-publication, and expect their request to be denied.

Another litigation item to report is a California Supreme Court decision which has found that the State Personnel Board has the sole authority to determine appeals with regard to adverse actions taken by government agencies. In years past provisions have been placed into some MOU's that provide for minor adverse actions to go to someplace other than the SPB, such as an arbitrator. The State Personnel Board challenged those provisions, claiming that under the California Constitution it has exclusive jurisdiction over such matters. The Supreme Court agreed.

Chief Counsel Ralph Hilton also reported that the Board Member averaged approximately 24 cases per day during the previous month. (Attachment B)

#### **9. Unfinished & New Business:**

Renee Irwin gave a PowerPoint presentation on the CUIAB budget. (Attachment C)

Mary Walton-Simons gave a report on FISMA. (Attachment D)

**10. Public Comment:**

There was no public comment.

**11. Closed Session:**

The regularly scheduled Board meeting adjourned, and the Board went into closed session.

**November 2005**

**LITIGATION CASES PENDING**

**TOTAL: 124**

Non-Benefit Cases: 3

New Cases Filed This Month: 3

Cases Closed This Month: 0

<b>SUPERIOR COURT:</b>	Claimant petitions .....	101	
	Employer petition .....	16	
	EDD petitions .....	0	117
<b>APPELLATE COURT:</b>	Claimant appeals .....	3	
	Employer appeals .....	1	
	EDD appeals .....	0	4

**2005 Activity Summary**

<b>FILED - SUPERIOR COURT:</b>	Claimant petitions .....	35	
	Employer petitions .....	10	
	EDD petitions .....	0	45
<b>FILED - APPELLATE COURT:</b>	Claimant appeals .....	1	
	Employer appeals .....	1	
	EDD appeals .....	0	2
<b>CLOSED - SUPERIOR COURT:</b> .....			38
<b>CLOSED - APPELLATE COURT:</b> .....			2

**2005 Decision Summary**

**Claimant Appeals**

Win: 6 Loss: 26

**Employer Appeals**

Win: 3 Loss: 5

**CUIAB Decisions**

Affirmed: 33

Reversed: 6

Remanded: 1



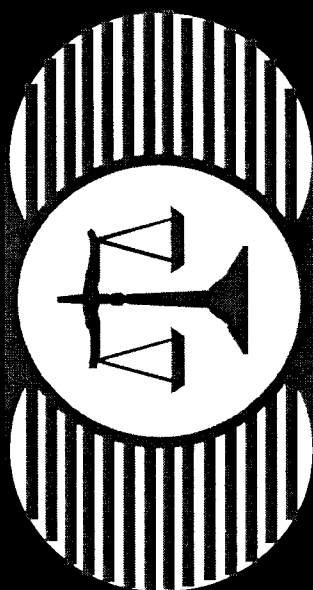
# Case Assignments to the Board for the Month of: November 2005

Agenda Item 8

Board Member	1st Member	2nd Member	3rd Member	UI	DI	Ruling	Tax	1 Party	2 Party	Total
Ann Richardson										
Sum	246	299	0	454	62	3	26	206	339	545
Percent	28%	34%	0%	52%	7%	0%	3%	24%	39%	
Jack Cox										
Sum	282	260	4	449	71	3	23	218	328	546
Percent	32%	30%	0%	51%	8%	0%	3%	25%	38%	
Joan Borucki										
Sum	113	0	0	113	0	0	0	15	98	113
Percent	13%	0%	0%	13%	0%	0%	0%	2%	11%	
Virginia Strom-Martin										
Sum	205	260	3	392	59	2	15	175	293	468 *
Percent	24%	30%	0%	45%	7%	0%	2%	20%	34%	
Total Cases Reviewed:	846	819	7	1408	192	8	64	614	1058	

ATTACHMENT B

# BUDGET



December 2005

# Current Budget

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■ Positions	631 PYS
■ 536 Permanent	
■ 95 Temporary Help	
■ Salaries / Wages	\$39,435,232
■ Benefits	\$14,316,235
■ <u>OE&amp;E</u>	<u>\$13,317,691</u>
■ TOTAL	\$67,069,158

# Budget Decisions

Policies initiated to ensure CUIAB did not overspend its personnel budget:

■ Compensating Time Off (CTO) will be authorized in lieu of Overtime for pay.

■ This is a projected savings of \$500,000.

■ Vacated positions are to be held vacant for 4 months. Exempt from this rule will be upper management positions of PALJ, LSS IIs, LSS Is and Managers.

■ This is a projected savings of \$1,000,000.

■ Permanent positions are to be filled as permanent intermittent for new hires

# Position PY Allocations

Branch	Perm	Temp	TOTAL
Executive	18.0	2.25	20.25
Field	389.0	77.93	466.92
Appellate/CTU	56.0	10.50	66.50
Admin	30.0	1.87	31.87
IT	21.0	1.75	22.75
P&PM	22.0	.70	22.70
<b>TOTAL</b>	<b>536.0</b>	<b>95.00</b>	<b>631.00</b>

# Salary/Wage Allocations

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Branch	Perm	Temp	TOTAL
Executive	1,514,867	116,350	1,631,217
Field	27,502,867	3,196,291	30,699,158
Appellate/CTU	3,418,508	495,968	3,914,476
Admin	1,619,899	67,059	1,686,958
IT	1,286,088	63,357	1,349,445
P&PM	1,185,499	25,156	1,210,655
<b>TOTAL</b>	<b>36,527,728</b>	<b>3,964,181</b>	<b>40,491,909</b>

# OE&E Allocations

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Executive	\$ 522,590
Field Operations	\$ 9,188,198
Appellate	\$ 115,326
Admin	\$ 2,583,172
Information Technology	\$ 635,425
P&PM	\$ 272,980
<b>TOTAL</b>	<b>\$13,317,691</b>

# OE&E Categories - Large

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Expense Category	Dollars	%
Telephone Service	\$ 511,000	4%
Travel	\$ 771,506	6%
Interpreter Services	\$ 1,334,415	10%
Leases/Utilities/DGS Planning	\$ 7,810,074	59%
<b>TOTAL</b>	<b>\$10,426,995</b>	<b>78%</b>



# OE&E Categories - Small

Expense Category	Dollars	%
CHP & Security Services	\$ 50,836	0%
Subscriptions/Memberships	\$ 66,394	0%
Postage	\$ 92,700	1%
Misc. Expenses	\$ 105,189	1%
Professional Serv Contracts	\$ 182,646	1%
Training	\$ 184,508	1%
Atty Gen Serv & Court Costs	\$ 298,000	2%
Non DP Equipment	\$ 307,391	2%
Equip Rent / Maintenance	\$ 342,889	3%
SWCAP	\$ 377,790	3%
Supplies	\$ 403,737	3%
<b>TOTAL</b>	<b>\$2,412,080</b>	<b>18%</b>

# Workload and Earnings Fluctuations

## October 2005 Revise ~ 2005-06 Current Year

- Forecasts for the UI program project the workload at 241,632 cases in the current fiscal year 05-06. This is a decrease of 14,368 cases from the original budget. Hence, the current year budget was reduced by 27.4 PYs and \$2,260,000.

- Forecast for the DI program project the workload at 24,590 cases which is down 1,770 cases. The budget was reduced by 4.6 PYs and \$225,878.

- The total proposed adjustments, for the Current Year 2005-06, are a reduction of 16,138 cases, and a reduction in temporary help positions and dollars of -32.0 PYs and -\$2,485,878.

## May 2006 Revise

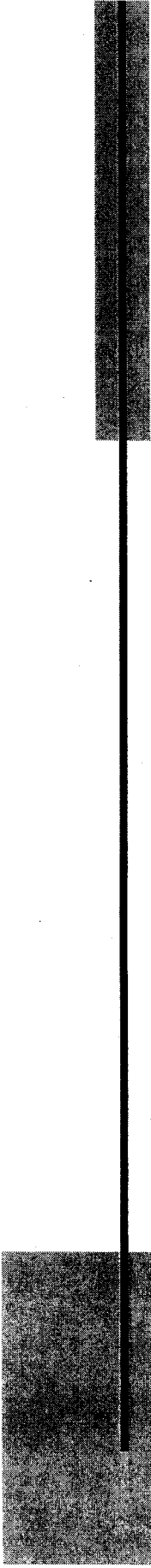
- Paid Family Leave Program - \$1.8 million at risk

# Budget Adjustments

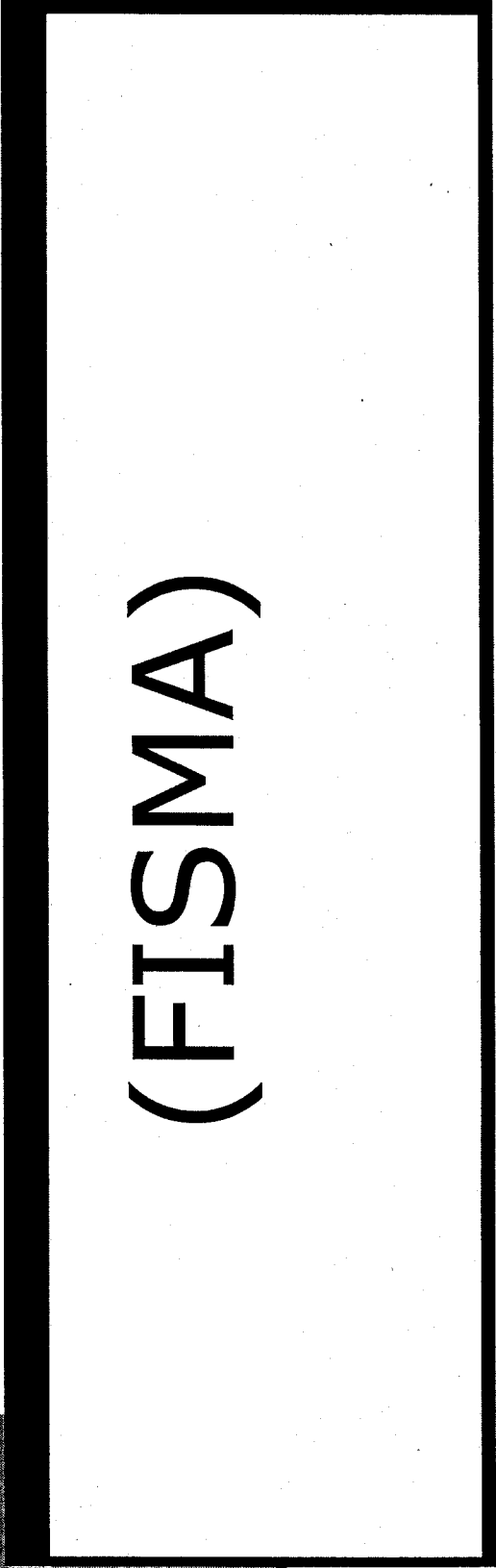
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The budget will be revisited at the end of the 2nd quarter to determine:

- Actual expenditures and economies
- Unforeseen and emergency purchases
- Actual and projected surplus earnings
- Potential branch augmentations



# Financial Integrity & State Manager's Accountability Act



(FISMA)

# Background & Purpose of FISMA

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- Established in 1983
- Government Code Sections 13400-13407
- SAM Section 20000
- Ensure internal controls are in place and operational.
  - i.e. proper record keeping for physical inventories, purchases, stock received, attendance reports

# Requirements of FISMA

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- Establish and maintain internal accounting and administrative controls.
- Communicate control requirements to employees.
- Evaluate the effectiveness of controls.
- Report findings from evaluations.
- Submit certification of compliance every two years.

# Requirements of Certification

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- Labor Agency
- Legislature
- State Auditor
- Governor
- Department of Finance, Director
- State Library

# Status of CUIAB Compliance

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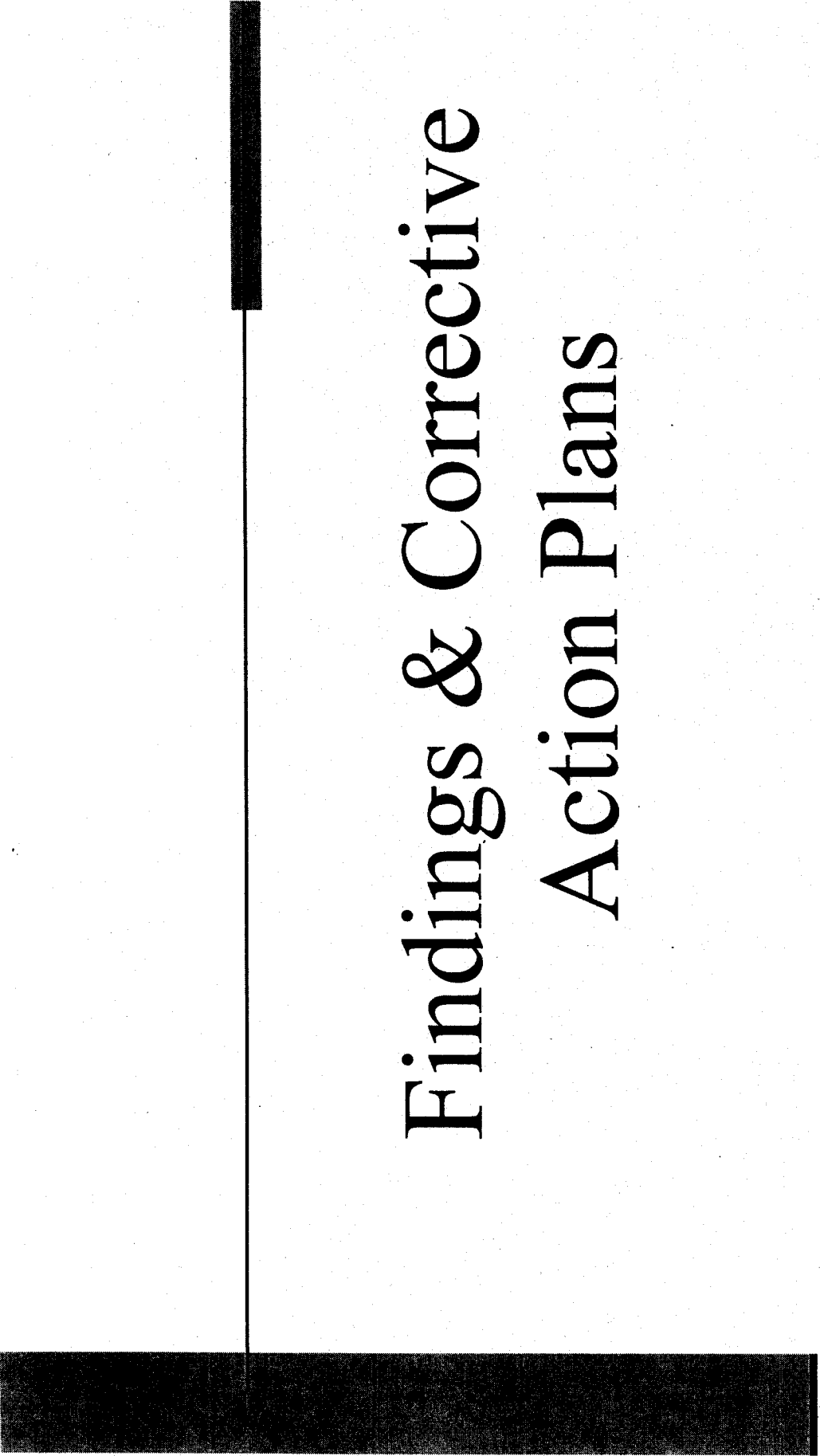
- Determined status of CUIAB compliance activity
- Sought EDD's assistance with the review
- Project commenced May 2005
- Project completed and certification to be submitted by the end of this month



# Overall Review Finding

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- Auditors issued a “clean” report
- No major weaknesses
- Some opportunity for improvement noted
- Management and line staff training is necessary
- Training/compliance contingent on LWDA approval for training conferences



# Findings & Corrective Action Plans

# Number 1

<b>Finding</b>
Inadequate separation of duties over certain areas of purchasing in IT.

<b>Corrective Action Plan</b>
Management and line staff are being cross-trained now to facilitate the separation of duties required.

## Number 2

<b>Finding</b>
Stock Received Reports in the acquisition and transfer of fixed assets are not always being submitted by receiving offices in a timely or accurate manner.

<b>Corrective Action Plan</b>
Management and line staff will be given updated training and instructions.

# Number 3

<b>Finding</b>
Estimated sales tax on purchase orders with multiple “ship to” addresses are not always completed properly.

<b>Corrective Action Plan</b>
Immediately following notification of this finding in September, Management and line staff were given updated procedures and instructions for completing these properly.

# Number 4

<b>Finding</b>
Employee timesheet format is not consistent throughout CUIAB and these are not always signed by <u>both</u> the Employee and the Supervisor.

<b>Corrective Action Plan</b>
A core group of Personnel and PPM staff will develop and implement a standardized timesheet process to ensure both employee and supervisor signatures are captured. Management and line staff will be given updated training and instructions.

# Number 5

<b>Finding</b>
A lump sum calculation overpayment error was made during an employee separation process.

<b>Corrective Action Plan</b>
Management and line staff were provided with updated instructions and an accounts receivable was set-up to collect the overpayment.

# Number 6

## Finding

The inventory database for tracking fixed assets is not accurate (e.g., incorrect serial numbers, incorrect location of asset), some items could not be located, and one analyst had access to the inventory database when access was no longer needed.

## Corrective Action Plan

This has a direct link to finding #2 – dealing with Stock Received Reports and the timely or untimely submission. In addition to the corrective action for #2, the analyst's access has been terminated and a core group of IT and BSO analysts will be looking at the feasibility of an automation effort to eliminate future control deficiencies in this area and improve accountability of fixed assets.



# Conclusion

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**Every day you may make progress. Every step may be fruitful. Yet there will stretch out before you an ever-lengthening, ever-ascending, ever-improving path. You know you will never get to the end of the journey. But this, so far from discouraging, only adds to the joy and glory of the climb.**

**Sir Winston Churchill (1874 - 1965)**